

1 Michael W. Sobol (State Bar No. 194857)
(msobol@lchb.com)
2 Paul A. Moore (State Bar No. 241157)
(pmoore@lchb.com)
3 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
275 Battery Street, 30th Floor
4 San Francisco, CA 94111-3339
Telephone: (415) 956-1000
5 Facsimile: (415) 956-1008

6 Michael A. Caddell (admitted *pro hac vice*)
(mac@caddellchapman.com)
7 Cynthia B. Chapman (State Bar No. 164471)
(cbc@caddellchapman.com)
8 George Y. Niño (State Bar No. 146623)
(gyn@caddellchapman.com)
9 CADDELL & CHAPMAN
1331 Lamar, Suite 1070
10 Houston, TX 77010
Telephone: (713) 751-0400
11 Facsimile: (713) 751-0906

12 *Attorneys for Plaintiffs*

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 (Southern Division)

16
17 **JOSE L. ACOSTA, et al.,**
18 **Plaintiffs,**
19 **v.**
20 **TRANS UNION, LLC, et al.,**
21 **Defendants.**

Case No. 06-cv-5060 DOC (MLG)

**CORRECTED¹ DECLARATION OF
MICHAEL W. SOBOL IN
SUPPORT OF OPPOSITION TO EX
PARTE APPLICATION FOR AN
ORDER FOR EXPEDITED
DEPOSITIONS OF [OUT OF STATE
FACT WITNESSES] ELIZABETH
WARREN AND EVAN
HENDRICKS TO BE COMPLETED
IN THE OFFICES OF
PLAINTIFFS' COUNSEL IN
ORANGE COUNTY, CALIFORNIA
WITHIN SIXTY DAYS**

Judge: Honorable David O. Carter

22
23
24
25
26 I, Michael W. Sobol declare and state.

27
28 ¹ The corrected Declaration reads "In Support of Opposition to Ex Parte Application" instead of the mistaken original Declaration, which read "In Support of Ex Parte Application".

1 1. I am a member in good standing of the California State Bar and
2 this Court, and a partner in the law firm of Lieff, Cabraser, Heimann & Bernstein,
3 LLP ("LCHB"). I have personal knowledge of the matters set forth herein, and
4 could and would testify competently thereto if called upon to do so.

5 2. I am one of the attorneys representing plaintiffs Terri N. White,
6 *et al.*, in actions pending in this Court against Trans Union, LLC ("Trans Union")
7 and Equifax Information Services, LLC ("Equifax") which are consolidated with
8 action brought by Jose Hernandez against those same defendants, (together,
9 "*White/Hernandez*"), and which are related to the above-captioned action and
10 another action pending against Equifax (together, "*Acosta/Pike*").

11 3. On November 17, 2006, the Court entered an Order denying the
12 *Acosta/Pike* plaintiffs' motion to disqualify the *White/Hernandez* plaintiffs'
13 counsel. The Court stated in that Order that it would "entertain a formal motion . .
14 . for expedited depositions to clarify the factual issues here in dispute."

15 4. On November 21, 2006, *Acosta/Pike* counsel sent a letter
16 requesting that *White/Hernandez* counsel agree to an order setting the expedited
17 depositions of two out-of-state fact witnesses, Evan Hendricks and Elizabeth
18 Warren. Attached hereto as Exhibit A is a true and accurate copy of the November
19 21, 2006, letter.

20 5. On November 27, 2006, *White/Hernandez* plaintiffs replied that
21 they would not oppose expediting those depositions, even though they believed
22 them to be unproductive and unnecessary. However, we also stated, in pertinent
23 part: "we do not think it is appropriate to require that the depositions take place in
24 California. We would suggest instead that they be deposed via telephone or video
25 conference, or in person in Boston (both witnesses, if Mr. Hendricks is willing to
26 take the shuttle there), or in Boston (Warren) and Washington D.C. (Hendricks),
27 unless they happen to be willing to volunteer to travel to California." Attached
28 hereto as Exhibit B is a true and accurate copy of *White/Hernandez* plaintiffs' the

1 November 21, 2006, email.

2 6. On November 27, 2006, *Acosta/Pike* plaintiffs responded,
3 suggesting that the parties jointly call the witnesses regarding the scheduling of
4 their depositions and to “ask *whether* they will be willing to travel to California for
5 deposition.” (Emphasis added.) *Acosta/Pike* plaintiffs expressly noted the
6 *White/Hernandez* plaintiffs’ “caveat that we check with the witnesses to see if they
7 will agree to come to California.” Attached hereto as Exhibit C is a true and
8 accurate copy of *Acosta/Pike* plaintiffs’ November 27, 2006, letter.

9 7. On November 28, 2006, *White/Hernandez* plaintiffs sent an
10 email offering to facilitate the scheduling of the depositions. Attached hereto as
11 Exhibit D is a true and accurate copy of *White/Hernandez* plaintiffs’ November 28,
12 2006, email. In a November 29, 2006, letter the *Acosta/Pike* plaintiffs decline the
13 *White/Hernandez* plaintiffs’ offer to facilitate the scheduling of the depositions.
14 Attached hereto as Exhibit E is a true and accurate copy of *Acosta/Pike* plaintiffs’
15 November 29, 2006, letter.

16 8. On November 29, 2006, the *White/Hernandez* plaintiffs wrote to
17 the *Acosta/Pike* plaintiffs, restating their agreement to have the depositions
18 conducted on an expedited basis, but also noting that while “we will not oppose the
19 depositions occurring on an expedited basis, but nonetheless cannot commit to
20 either the scheduling timetable you suggest or that they should be held at your
21 office because we have no information about the witnesses’ availability or their
22 willingness to have the depositions conducted there.” Attached hereto as Exhibit F
23 is a true and accurate copy of *White/Hernandez* plaintiffs’ November 29, 2006,
24 email.

25 9. In the November 29, 2006, the *White/Hernandez* plaintiffs also
26 suggested that the parties agree upon a letter that could be sent to the out-of-state
27 fact witnesses apprising them of *Acosta/Pike*’s request to take their depositions.
28 The parties agreed to the form of those letters, which are included in the

1 *Acosta/Pike* plaintiffs' *ex parte* application.

2 10. The *Acosta/Pike* plaintiffs have not communicated with the
3 *White/Hernandez* plaintiffs regarding the issue of the depositions of the out-of-state
4 fact witnesses since November 29, 2006 (other than being copied on the December
5 5, 2006, letters to the witnesses). The *Acosta/Pike* plaintiffs never informed the
6 *White/Hernandez* plaintiffs of their intent to make the *ex parte* application, and
7 never consulted with them about the *ex parte* application as required under Local
8 Rule 7-19.

9 11. In the application, the *Acosta/Pike* plaintiffs mislead the Court
10 by stating that the *White/Hernandez* plaintiffs "do not oppose the instant request for
11 the setting of these depositions." Actually, as is plain from the correspondence
12 referred to above, the *White/Hernandez* plaintiffs, while they have consistently
13 agreed to expediting the depositions, have consistently opposed the ordering of the
14 depositions taking place in California unless agreed to by the out-of-state witnesses.

15 12. On December 18, 2006, the *White/Hernandez* plaintiffs
16 informed the *Acosta/Pike* plaintiffs of their intention to oppose the *ex parte*
17 application on the grounds that it was improperly filed under Local 7-19 and
18 misstates the position of the *White/Hernandez* plaintiffs. Attached hereto as Exhibit
19 G is a true and accurate copy of *White/Hernandez* plaintiffs' December 18, 2006,
20 letter.

21 I declare under penalty of perjury under the laws of the United States
22 that the foregoing is true and correct. Executed this 20th day of December, 2006,
23 San Francisco, California.

24
25 

26
27 Michael W. Sobol